

## **Exposure to Liability in the Salt Lake City Fire Department**

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## Abstract

The Salt Lake City Fire Department has not properly prepared its employees to address the potential for the impacts of legal liability. Descriptive research was used to address questions regarding the current firefighter level of knowledge regarding liability, various types of liability, the most costly types of events, and actions taken to reduce liability in other departments. Survey results and interviews generated information regarding these issues. The data revealed that although liability is common throughout a firefighters work responsibilities, that assumed in personnel administration is often the most costly. Recommendations focused on a comprehensive training program for the Salt Lake City Fire Department that will raise awareness of potential liability issues and re-establish the need for specific SOG'S/Policies to limit the negative consequences of liability.

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## Introduction

We live in a litigious society. How many times have you heard that? It is becoming cliché in today's public safety world. What once was an industry based on professionalism and accepted public trust, is now perceived by many to be a career susceptible to liability and reproach. Although in general, public safety employees still enjoy a reputation unparalleled in local government service, career firefighters encounter legal challenges today that were not envisioned 20 years ago. The public now has much less tolerance for oversight or carelessness in their emergency responders. Whether this is related to the increasing prevalence of attorneys bringing civil court cases or fundamental shift in personal accountability, the fire industry must be increasingly aware of their own legal responsibility as well as the evolving expectations of the citizenry.

The problem addressed in this work is that The Salt Lake City Fire Department has not properly prepared its employees to address the potential for legal liability stemming from the general responsibilities of the fire department. This may include: Vehicular operations, fire ground operations, emergency response, emergency medical care, administrative actions, and others. Data and case studies from around the country have indicated that this lack of education is indeed a cause for concern, given the financial, personal, and public perception consequences. Each of these could be reduced with more practical training and preparation.

Needless to say, the influence of the law on fire department operations has traditionally been neglected. Legal cases involving firefighters are relatively few compared to those in law enforcement, yet many do have an impact on personnel delivering emergency services.

Firefighters work side by side delivering a variety of services to the community. They also work in extensive administrative environments that are often underemphasized. This work will solicit data from a variety of fire departments in an effort to better identify the current liability issues faced by the fire service. Further, the data will reveal which type of lawsuit costs fire departments the most in time, resources, and money. In addition, immunity will be discussed from the perspective of firefighters as well as attorneys. From there, recommendations will be made as to how the Salt Lake City Fire Department can better educate its workforce in reducing the risk of liability. Fire departments are currently under scrutiny for incidents of negligence, breaches of privacy, discrimination, and incompetence. Ignorance to the law is no excuse for these shortcomings.

The purpose of this work is to identify a comprehensive plan to educate and inform Salt Lake City Fire Department members of potential legal liability in the course of performing their jobs. In recent years there has been progress in developing new policies and guidelines that address potential firefighter misconduct and ultimately, subsequent liability. Interestingly, many of these regulations have been focused solely on the operational levels of the fire service. There has been little emphasis on the firefighters exposure for operating outside of the standard operating procedures of firefighting. To a large extent, the firefighter performing his/her routine duty is unaware of the liability that confronts them when they leave the fire ground. This work will examine some specific instances where fire industry decision-making is called into question. In addition, survey data will provide topics for emphasis in educating our workforce.

Descriptive research will address the following questions:

1. What is the current level of knowledge of firefighters regarding legal principles and sources of liability?
2. What are the various types of liability involving the fire industry?
3. Which events have been most costly to fire organizations and in what manner?
4. How have other fire departments attempted to reduce liability exposure within the fire department? Which have been most successful?

## Background and Significance

In the performance of a firefighters duties, there are inherent risks. These range from physical harm, to psychological stress, to emotional impairment, to legal and financial liability. Firefighters have no “guarantee” they will not be inflicted upon by any of these means throughout the course of their careers. In fact, the chances are good that one or more of these afflictions will impact the life of the responder at some point during his tenure in emergency response. This truism is not universally accepted in the Salt Lake City Fire Department, nor many other departments. As Curt Varone says, “Firefighters are engaged in dangerous occupation where people are injured and property is lost even when things go as well as they possibly can.” (Varone, 2007b). This liability risk of course, should be of great concern to firefighters throughout the country as well as in Salt Lake City. Given that a summary judgment could cost this firefighter his certifications, his reputation, his compensation, and possibly his job. This has a tangible impact on the provision of effective emergency service. As the Deputy

Chief of Operations for the Salt Lake City Fire Department, I have recognized this as an emerging issue for the fire service as a whole, and the need for the fire service to respond appropriately.

Professional firefighters are trained to perform their jobs in some of the most demanding environments imaginable. It is an expectation that we utilize our training and experience at emergency scenes to save lives, restore peace, and limit damage. Experience comes with time, and it is a characteristic that is difficult to quantify. Training, on the other hand, is certainly quantifiable. It is not nebulous; you have had the training or you have not. Those without training are significantly more liable than those that have been trained. This is the crux of many liability issues confronted by the fire industry today, and this is why research is valuable.

I have seen how firefighters erroneously believe that they are immune from negligence, responsibility, or worse: criminal acts. They either believe that they can handle such issues alone, or that they will not be “held responsible” for any potential wrongdoing given their altruistic intentions - after all; they are a *firefighter*. This is far from the truth. “There is a greater public awareness, greater social consciousness,” says Assistance Chief John Petersen. “The public is speaking through the courts and telling public officials that they are going to pay for misconduct and bad judgment” (Stewart, 1981). This comment is 31 years old, yet we continue to underemphasize the legal implications of the world we live in.

One would think that the nature of our jobs predisposes us to false accusations of negligence or misconduct. There should be some inherent protection awarded first responders

against frivolous civil suits. In fact, there are. "Assumption of risk" is the most fundamental of the defenses to negligence. In short, this mandates that the person bringing suit must acknowledge a specific amount of risk performing the act, and limits the liability of another party which may or may not have contributed to the hazard (Varone, 2007a). For instance, a firefighter cannot be negligent for failing to report illegal fireworks. The citizen assumes risk by choosing to set off illegal fireworks. In questions of such risk, comparative negligence standards may apply. These allow courts to determine the extent of risk each party to the suit is responsible for. Not surprisingly, however, the courts view "extent of risk" very subjectively, which places firefighters in an unenviable position of being a lucrative target.

In some states, government function departments provide limited immunity to fire departments. In others, "statutory immunity" provides liability protection to those in the act of responding to an emergency whether they be fire, police, good Samaritans, etc. Regardless of where they are employed by a government or proprietary organization. The "public duty doctrine," as well, provides an immunity exception to tort claims acts when a government employee engaged in governmental function (police or fire work) uses discretion in the performance of his duties (Comstock, 2010).

The fire officer makes decisions on the fire ground that are necessary to reduce loss of life and limit property loss. These would include assignments given to crew members immediate scene objectives, and the use or misuse of additional resources. These are all questions of discretion used by public safety officers, and these acts may very well vary from employee to employee and situation to situation. It is very difficult to standardize emergency



response procedures in situations given the enumerable variables to consider. These decisions are the responsibility of experienced responders trained to react and anticipate dangerous situations. Plaintiffs may not understand or recognize this basic assumption, and may allow attorneys to argue the legality of tort claims acts. Nevertheless, liability in terms of discretion is difficult to prove, but not uncommon. This is unfortunate given the unique demands of firefighters and the assumption of risk that they and their organizations accept.

It is clear then, that government organizations and their employees are not immune from liability. Sovereign immunity in the United States no longer exists. Although we as public officials enjoy specific exceptions against frivolous lawsuits, tort claims acts provide a means for private individuals to seek retribution from government entities. The Internal Revenue Service, for example, has been known to overstep its boundaries. When they do so, they are liable under tort claims acts. Fire departments are less often cited in tort claims of course, but are nonetheless subject to them. The Salt Lake Cit Fire Department has been the defendant in a handful of tort claims stemming from potentially negligent EMS care, to poor salvage procedures, to disciplinary actions. Our training standards have been called into question as well as our response times. In addition, there are several other fire department responsibilities that carry some potential for individual and departmental liability. These would include being held accountable for civil rights violations in hiring, firing, or promotion. Negligent or improper training operations, labor relations liability, or violations of Fair Labor Standards, overtime, or union/collective bargaining rules (Clark, 1997). These are instances that can and do occur on a daily basis and may come into question from a legal perspective.

For instance, tort claims are relatively common in Emergency Medical Service (EMS); which is normally 80-85% of all calls in a metropolitan fire-based EMS organization (DiNolfo, 2009). Liability in the form of a negligence case can surface in a variety of ways for fire/EMS personnel. In Salt Lake City, the capacity to consent or deny medical care is sometimes controversial. At what point does a patient lack the ability to determine intervention on his behalf? Some intoxicated patients are unable to speak clearly, yet lack the basic requirements for emergency transport by ambulance. Is it within our scope of practice to deny such an individual further care? Alternatively, fire ground decisions can be no less ambiguous. The risk vs. benefit analysis that incident commanders make on scene is based on the best information available to the commander at that given time. The scene is constantly evolving, yet the IC will need to commit resources based on circumstances at a given time. Is the building safe? Should a search be conducted under existing conditions? Should we go defensive?

In Salt Lake City as well as in other parts of the country, firefighters are faced with the reality of human nature impacting these decisions. Things do not always go the way that we plan and we are forced to adapt to the situation. In some cases, although we intend to provide the most professional service possible, mistakes are made. It is at this point that we as firefighters become vulnerable to lawsuits that focus on an act or the omission of an act. Clear and concise guidelines or procedures regarding fire department administration and services must be developed to limit liability and ensure consistent, effective, emergency response. If these standards do not exist, possible disruption of service as a result of these “gray” areas becomes more likely.

## Literature Review

Historically, fire officers have been able to respond to emergency scenes with little concern about liability. They have assumed that any decisions made during an emergency response would not be judged at a later time by courts and juries. Fire departments have taken solace in this perception for years. We in the fire service are all guilty of viewing ourselves as the “good guys,” here to help serve the public. Many times, we scoff at the less-glamorous duties associated with fire prevention, training, equipment maintenance, and documentation because it does not square with the image we have of what we do. However, we have to recognize that when people are hurt or property is lost those impacted will want someone to blame (Firehouse, 2007).

This concept is further supported by a well-known body of law developed to shield the government from liability, even when it has acted negligently. This law of government immunity greatly complicates the question of whether and when a fire service organization can be held liable for damages caused by negligence. Traditionally, the fire service has shared this umbrella of protection with the elected decision-makers, highway agencies, police departments, and other public officials who carry out the business of making the government run. Now, however, various legal actions to strip the government of its protection from lawsuits is challenging this immunity. The significance of this escalating problem can be seen in the financial impact of lawsuits in several areas of fire department operations.

One area where fire departments are commonly found in court has to do with vehicular operations. Operating an emergency vehicle is probably the highest form of operational liability a department faces every single day (Raaheb, 2012). Firefighters routinely drive heavy apparatus in and around metropolitan areas at relatively high rates of speed. Many cities across the country have experienced an increase in the number of fire apparatus accidents in recent years. Increasing traffic, better soundproofing in cars and the traditional “right of way” laws for emergency vehicles all play a role in the number of fire apparatus accidents. Many fire apparatus accidents occur while the vehicles are operating at high speeds, on their way to an emergency. These accidents can cause serious damage to any vehicles they strike, severely injuring or killing the occupants.

The operation of fire apparatus universally is recognized in the fire service as a high-frequency, high-risk activity. In other words, it is one of those activities that we engage in frequently, and carries the potential to cause a great deal of harm if things go wrong (Varone, 2010).

In Los Angeles, the number of fire truck accidents has become such a cause for concern that the LA Fire Department has issued new guidelines for drivers, including a speed limit and requirements to stop at red lights and stop signs. The hope is that fire truck accidents will be less likely if the drivers of fire trucks learn to drive more cautiously, rather than assuming that other drivers will simply get out of the way in time. Other cities are considering similar measures (firetruck accidents, n.d.).

This can and does implicate many drivers, engineers, officers, administrators, and the department's themselves in any liability claims. In one high profile 2007 Baltimore case, a fire truck responding with lights and siren to smoke in a building failed to clear an intersection and struck another vehicle killing 3 people. The city agreed to compensate the maximum set for motor tort claims involving police and firefighters responding to emergencies (\$40,000/individual). In this case, although emergency vehicles are required by Maryland law to stop at all red lights and stop signs, no criminal charges were filed. In this case city and state immunity protection was recognized and gross negligence was not considered. The source of the smoke? Burnt food on the stove (Hermann, 2012).

In another 2009 fire apparatus case a 22-ton fire truck unable to stop on a downhill grade resulted in the death of the front passenger Lieutenant. In this case, "limited classroom instruction and no driver training in the proper use of air brakes in downhill and emergency circumstances." was the determining factor. In this case the plaintiff's of the deceased sued the driver/operator and department for gross negligence and received undisclosed compensation unlimited by Massachusetts law. City and state immunity protection was limited and the defendant was forced to defend himself against a serious tort claim (deadly fire truck, 2009).

Vehicle accidents are just one of the liability facing firefighters today. Emergency Medical response is also fraught with potential liability. Most immunity statutes protect governmental entities from liability only if the negligence does not rise to the level of willful misconduct or gross negligence. This limitation has been the savior of many agencies in cases involving EMS care. Although some immunity statutes protect the individual EMT from liability,

the public entity remains liable for the consequences of the negligence. An example of this occurred in a Massachusetts case in which two EMT's on municipal rescue unit failed to transport an intoxicated patient injured by a fall. The EMT's were dismissed from the case, but the municipality remained responsible for the patient's death. It has also been ruled in Illinois that the city of Chicago may be held liable for the negligent conduct of its paramedics, even though the paramedics are not made defendants to the case. While this may be comforting to the individual, the agency remains at risk (Shanaberger, 1987).

This was especially true with a recent case in Alameda County California. A 52-year old man died of drowning while firefighters watched. The firefighters were untrained in water rescue and thus unable to render assistance in this case. Allegedly due to budget cuts, the fire department's water rescue program had been scrapped and policy prohibited them from entering the water. Of course, public outcry was very critical of the fire department's lack of service, and the city of Alameda was forced into defending itself, as well as the fire department's position. Previous case study shows that the police have no special duty to protect individuals from criminals. Does the same logic extend to whether or not firefighters have a duty to rescue a citizen from attempted suicide? What if department policy prohibits this (Hsu, 2011). It is worth noting here that most fire departments go on significantly more EMS runs than structure fire runs; yet it appears that significant litigation can also be found involving fire ground operations.

In 1955 a large amount of gasoline spilled from storage tanks onto a city street in Lawrence, Kansas. The local fire department was notified and quickly arrived on scene. In order

to determine the extent of the problem, the supervising fire chief told a firefighter to touch a cigarette to the ground. Not surprisingly, a conflagration ensued that destroyed several automobiles. In the lawsuit that followed, the court refused to hold the town liable for the foolhardy tactic of its fire chief, citing the courage of the fire service (Brohoff, 1997).

This tongue-in-cheek example certainly reflects the traditional view that for many years local governments weren't liable for their failure to provide effective fire protection. Even obvious failures in firefighting tactics and strategies would not indicate liability. Today, however, the limitations on legal liability in fire operations are expanding and the perception that the fire department "can do no wrong" is now being scrutinized. Although this trend began affecting the fire service in the late 1980's, *Lawyers Alert*, a national weekly publication for attorneys, proclaimed the issue on the front page of its April 13, 1992 edition in no uncertain terms: "Sue a fire department for fire damage. If you represent a client who has suffered property damage in a fire, you should be aware that it may be possible to sue the fire department for not fighting the blaze effectively enough." (Schneid, 1995). This begs the question: are firefighters vulnerable to civil suits every time they deviate from established "textbook" fire practices? Maybe not, but there is certainly cause for concern in any case.

In the worst case scenario, fire departments suffer a line of duty death (LODD). A tragedy such as this brings countless emotions to the surface of both department and family members. There is shared grief and then more often than not, there is animosity, and then blame. There appears to be increased litigation against fire departments and senior fire officers filed by surviving families of firefighters killed in the line of duty, seeking compensatory and

punitive damages from a jury. Many of these suits allege deprivation of constitutional rights, claiming that the fire department failed to implement improvements identified in prior incidents. If the plaintiff can establish sufficient facts to “shock the conscience” of the court, the trial judge may order the case to trial (Bennet, 2008).

The legal focus of a claimant's attention in cases such as this is the common law tort of negligence. For a claimant in this tort to succeed, he or she must show that the defendant owed persons in his or her position a duty to take care, that the duty was broken, and that damage was thereby suffered. To prove that a duty of care was owed, the claimant has to prove that the damage was reasonably foreseeable, that they and the defendant were in a close and direct relationship (i.e. proximity), and that it would be fair, just, and reasonable for such duty to be imposed (Everton, 2005).

In *City of Hammond, Indiana v. Cataldi*, for example, it was alleged that a fire service organization acted negligently when it failed to maintain enough firefighters to operate the equipment it intended to use. In the same case, it was also alleged that the service's failure to supervise and train its firefighters to control and extinguish fires under the conditions encountered in a particular fire was negligent. In *Cryan v. Ware* in Massachusetts, it was alleged that firefighters acted negligently when, in fighting a fire burning at the rear of a house, they sprayed water on the front of the house where there was no fire. In *City of Fairbanks, Alaska v. Schaible*, the court found the fire department liable for failing to rescue a person stranded in an upper floor of a burning building. The rescue failed because the ladder firefighters used was too short to reach the victim. The court said this fact alone didn't constitute negligence, but



negligence occurred when firefighters failed to use an alternative common-sense method of rescue (Brodoﬀ, 1997).

In 1978, a fire destroyed five brick buildings in Lowell, Massachusetts. The fire started on the sixth floor of an unoccupied building with a sprinkler system that worked properly and was functioning. However, the firefighters who responded to the blaze decided to use the available water to operate their hoses, which reduced water pressure in the sprinkler system and in effect, turned it off. As a result, the firefighters decision to rob water from the system caused the destruction of five buildings. The property owners brought suit against the city in this case and ultimately received compensation (Brodoﬀ, 1997) .

This case illustrates all of the essential elements of a firefighting negligence case. The firefighters did have a duty to respond from a nearby fire house and display competence in their fire tactics. They failed to do so, however, and acted carelessly. This breech of duty caused the buildings' destruction. Damages were appropriately awarded per the approximate value of the buildings and their contents.

It is reasonable to assume that there are responsibilities that go with the job of firefighting, and the public has the right to expect a high level of conduct. But is the public aware of how challenging that responsibility can be? Because fire departments provide a service unlike the services of other government entities, liability statutes must be designed specifically for the fire service. Several public policy arguments that support fire ground immunity legislation exist, and each revolves around the reality that the fire service is very different from other government services.

As far back as the 1950's it was apparent that the fire service was quickly evolving into the service that could solve virtually any citizen's problem:

Calls upon the fire service, both permanent and volunteer, as we have said are on the upswing and show signs of growing. In some departments these non-firefighting calls outnumber those for actual fire duty. Concurrently, the costs for all these non-fire operations are showing a steady increase. Further analysis indicates that in the cities at least, a large percent of these extra-curricular activities being performed by the fire department are having repercussions to the fire service that are not always favorable. Often, they are responsibility of other branches of local government and should rightfully be handled by those other services. (Staff Review, 1954).

This perception forced the fire service to ultimately address incidents that they may or may not be trained for. In addition, responsibility for operations at such incidents became vulnerable to criticism from both property owners and city leaders. It became necessary for the fire service to quantify exactly why they should be held to a different standard than other city or private entities.

First, operations at an emergency scene involve split-second decisions. Fire officials must weigh competing and often inconsistent considerations under immense time pressure. Few public officials must make the quick response decisions that fire officials routinely make during emergency operations. Most government decision-makers rarely confront real emergencies, which are commonplace occurrences in the fire service. For this reason, lawsuits

that challenge the decisions of fire officials do not further the interests of justice. The unique nature of decisions made on the fire ground would make it difficult, if not impossible, for a judge and jury to assess their appropriateness fairly or accurately. As Curt Varone says (Private Interview, 2012), teaching our fire service leaders to "do the right thing" is the most important part of addressing wrongdoing both on and off the fire ground.

Second, the adverse effects of the judicial process would restrict decision-making at emergency scenes. Fire officials face difficult and complex decisions at any emergency, and they should not have to consider the possibility that a judge and jury will second-guess those decisions at a later time. The threat of lawsuits would stifle the willingness of fire officials to take calculated risks and engage in creative solutions to emergency situation. Such creativity, long the hallmark of the fire service, has saved many lives and reduced property loss. Potential lawsuits would impede innovation, which has served the public well.

Third, the fire service is different from other government agencies. A continued trend toward liability could create serious problems for many communities, where volunteers and others provide fire extinguishment and emergency mitigation services with little or no taxpayer support. The financial impact of a lawsuit could be devastating in such communities, particularly for volunteer departments. Furthermore increases in the cost of the insurance required to protect against liability could be prohibitive.

Lastly, the fire service is different in that there is an inherent risk of injury while conducting firefighting operations. The function of the fire department directly relates to risk to people and property. In most non-emergency government operations, the basis for legal action

is rare, because, unlike fire department operations, most are low or no-risk operations (Spencer, 1993).

It is clear, then, that although there is basis for a lawsuit in almost all fire service operations, exposure to liability is certainly disproportionate to other government work. This means that the impact of negligent lawsuits on the fire service would certainly be unfairly disproportional to their impact on other government operations. "Unchecked liability would alter the fire service's fundamental role in society. Fire departments would become the virtual insurers of lives and property in their jurisdiction. In this case, the burden for costs associated with fire losses would shift from the insurance agency to the taxpayer." (Spencer, 1993).

If firefighting were strictly a private enterprise, carried out by and for the benefit of private parties, such proof would be all that was required to entitle the injured party to hold the fire service organization liable for all damages. However, firefighting isn't a private enterprise. It's generally a governmental function carried out by the cities, towns, and other governmental units for the public benefit (Brodoff, 1997).

There are those of course, who believe that liability should not be of primary concern to fire department operations administrators. Paramedic/attorney Carol Shanaberger states that "Despite glaring errors and misfeasance in the manner of dousing flames, case law shows little sympathy for the victims who seek recovery from defendant fire departments (Shanaberger, 1987). In many cases, Ms. Shanaberger is right; In the 1983 Indiana case *City of Hammond, vs. Cataldi*, for instance, the restaurant owner who claimed the city fire department was negligent in fighting a fire and causing the restaurant to be destroyed, was not awarded damages. It was

held that the exercise of judgment by the fire department and firefighters on how to fight the fire was protected by governmental immunity. The courts seemed extremely reluctant to invade the “sanctity of firefighting” (Shanabarger, 1987). This view would also be supported by Brian Roberts, Salt Lake City Attorney who says that the legal vulnerability of a fire department is directed related to positive public opinion (Brian Roberts, personal interview, 2012).

The media is no less helpful in reducing the perception that negligent lawsuits are rampant. With the influx of social media, only the most sensationalized events seem worthy of nightly news coverage. Attorney Randy Clark says that “Opposed to the unusual, strange, or downright bizarre fire cases that make the headlines, real legal problems are much less threatening. In the federal court system and most state courts, frivolous or clearly meritless cases or lawsuits are usually thrown out or dismissed. Judges and juries normally do what is proper (Clark, 1997). Of course, both entities are human, and undoubtedly mistakes are made in our courtrooms just as they are on the fire ground.

The degree to which the fire service may be exposed to liability for negligent firefighting depends, to a large degree, on the law of the state in which the fire department is located. Although all states have limited total government immunity, the amount of protection that remains varies among jurisdictions. The trend of recent years has been to hold firefighters to a level that exercises reasonable care in the conduct of firefighting operations and to hold fire departments liable when firefighters have acted negligently. In addition, the caps of damages that exist in all states will continue to soften the impact of negligence cases on the fire service (Brodoff, 1997).

This may be particularly true with administrative actions within fire organizations. There are indicators that the greatest amount of liability for firefighters may lie within the means of selecting, promoting, and supervising firefighters internally. An analysis of over 1,051 fire department related lawsuits shows that employment-related suits play a huge role in fire department litigation. Employment-related civil litigation (265 cases) combined with disciplinary actions (325) account for 590 cases, or 56.1% of all fire service legal proceedings. Add 164 job-related criminal cases, and there are 754 cases (71.7%) that are essentially personnel related. No doubt this is not news to the fire chiefs who spend most of their time addressing “people” issues. Varone went on to say that although not significant in his research (or this research), the most common criminal charge filed against firefighters was theft followed by arson (Varone, 2010b).

Whether or not a fire department administrator becomes vulnerable to a civil lawsuit may be directly related to the department’s commitment to training and SOP’s. Given what we know now regarding the increase in costly lawsuits involving fire operations across the country, fire departments and municipalities have responded by developing written Standard Operating Procedures (SOP) or Guidelines (SOG) for many operational and administrative processes. SOP’s can improve operational performance by providing uniformity in practices, establishing clear lines of responsibility, and enhancing accountability during emergency operations. Through this increased performance and a reduction in operations errors, SOP’s also can reduce a department’s exposure to lawsuits (Bentivoglio, 1995).

## Procedures

The process for identifying the various forms of liability that fire department's encounter, emphasizing those that are most costly, and developing a program to educate fire department employees on the pitfalls of liability and litigation, is largely dependant on recent data from similar size organizations. It is assumed that organizations with 150-500 full-time firefighters serving urban populations of between 150,000 - 250,000 residents will be similar in education, training, structure, and experience with liability. As such, each agency solicited for data was selected according to their relative size to Salt Lake City Fire Department and their urban demographic. Current issues in the fire service are also presumed to provide a more relevant indicator of what fire service organizations are facing in the 21<sup>st</sup> century.

With this in mind, the descriptive research in this work will utilize a simple survey consisting of six (6) questions. The number of questions was limited in an attempt to increase response rates and speed of return. In fact, the length of the questionnaire was displayed prominently in the request for feedback. The questions were designed to produce simple, yet relevant data of the types of legal issues departments are facing today and how they are being addressed. Care was taken to ensure the questions remained minimally intrusive in an effort to maintain the privacy of any personnel involved and to reassure administrators of the broad scope of research. The questions were designed to provide objective, unbiased information relevant to the purpose statement of the research.

Specific respondents were identified by their role in personnel management. The survey was directed by cover letter to the fire administrator(s) having the greatest oversight over

liability reduction in fire department operations. The respondents were provided the studies purpose, procedure, and scope, but were not informed of any pre-determined outcome or intent. Questions were administered as both closed-ended and open-ended in an effort to keep the completion task simple yet informative. When appropriate, the respondent was able to elaborate at will. The survey questions will yield qualitative and quantitative data regarding legal issues affecting each department. All survey recipients were informed of their participation in a research study and all that responded agreed to participate willingly.

Fifty (50) surveys were distributed electronically to various full-time departments meeting this criteria (Appendix A). Selected department's ranged regionally with the majority of department's residing in the east as a result of stated employee parameters. Of the 50, 16 were selected on the basis of having an individual who had participated in any of four previous Executive Fire Officer courses in addition to meeting the employee and demographic criteria. This was in an effort to increase survey response rates.

The questions were as follows:

1. What do you believe to be the biggest concern(s) of your workforce from a liability perspective?
2. Which is the most common type of legal action you have faced in the past 5 years?

Tort Claims

Property Damage Claims

Criminal Claims

Negligence claims

Other Claims



3. What did the claim involve, specifically?

EMS Care

Apparatus

Fire Ground Operations

Administrative

Other (please specify)

4. Which type of legal action has cost you the most in time and money?

EMS Care

Apparatus

Fire Ground Operations

Administrative

Other (please specify)

5. What have you done as an organization to limit exposure to liability?

Classroom Education

Practical Training

Development of additional policies

Nothing

Other (please specify)

6. In your estimation, has your plan been successful in reducing claims?

Yes

No

Why?

In addition, five personal interviews were conducted using these same questions from the survey. The interviewees were considered to be reliable sources for information regarding the subject matter of the research.

Interviewee A - Brian Roberts is a Salt Lake City, UT attorney assigned to the fire department.

Face to face interview December 5, 2012.

Interviewee B - Claire Gillmore is a West Valley City, UT attorney assigned to the fire department. Phone interview December 6, 2012

Interviewee C - Skye Garcia, Risk Manager for Salt Lake City, UT. Face to face interview December 5, 2012

Interviewee D - James Anderson, Risk Manager for West Valley City, UT. Phone interview December 6, 201

Interviewee E - R. Curt Varone, retired fire administrator, extensively published author, current consultant on fire industry legal issues. Phone interview November November 26, 2012.

Potential limitations to this research are:

1. Relatively small amount of data derived from those department representatives completing and returning the survey.
2. Hesitancy in providing information that is considered private in nature.
3. Hesitancy in providing information that may be considered derogatory towards the organization involved.
4. Assumption that the individual(s) responding to survey is/are providing accurate information representative of the organization as a whole.

## RESULTS

Twenty-one days following survey dissemination, the data was processed. Of the original 50 surveys distributed, 28 of the surveys were returned completed; a 56% participation rate for the questionnaire. Specific data related to each question is as follows:

### Question #1

Of the 28 surveys returned:

9 (32%) indicated that the greatest concern amongst firefighters for litigation is inappropriate actions on the fire ground.

8 (29%) indicated that the greatest concern amongst firefighters for litigation is negligent EMS care.

5(18%) indicated that the greatest concern amongst firefighters for litigation is discrimination in the workplace.

3 (11%) indicated that the greatest concern amongst firefighters for litigation is an incident causing injury or death during training

2 (7%) indicated that the greatest concern amongst firefighters for litigation is a lawsuit as a result of administrative action or discipline.

1 (3%) indicated that the greatest concerns amongst firefighters for litigation involves an accident during fire response.

Of the five personal interviews:

Interviewee A (IA) could not speculate confidently on firefighters concerns, but felt that firefighters were most concerned about motor vehicle accidents.

Interviewee B (IB) felt that firefighters were most concerned about poor decision-making on fire ground.

Interviewee C (IC) felt that firefighters were most concerned about workman's compensation claims.

Interviewee D (ID) was not confident regarding his response, but felt that firefighters were most concerned about being responsible for inappropriate damage to property.

Interviewee E (IE) believes from experience that firefighters are most worried about discrimination.

## Question #2

Of the 28 surveys returned:

14 (50%) had some form of property claim against them in the past 5 years.

10 (36%) had some form of tort claim against them in the past 5 years.

3 (11%) had some form of criminal claim against them in the past 5 years.

1 (3%) listed "other" with no details

Of the five personal interviews:

IA and IB indicated that the most common type of claim they see is property damage claims.

IC indicated that the most common type of claim they see is "other". Specifically, medical claims.

ID indicated that the most common type of claim they see is property damage claims.

IE indicated that the most common type of claim he sees is tort claims involving discrimination.

## Question #3

Of the 28 surveys returned:

12 (43%) involved administrative action

7 (25%) involved apparatus

4 (15%) involved EMS care

3 (10%) indicated other reasons, with two respondents citing Training as being involved.

2 (7%) involved fire ground operations

Of the five personal interviews:

IA and IB indicated that the property claims involved (1) fire ground operations, and (2) other - damage done during a training exercise on an existing building .

IC indicated that the most common type of claim they see is Workman's Compensation Claims.

ID indicated that the most common type of claim they see is (1) fire apparatus and (2) property damage due to "other". Specifically, testing fire hydrants.

IE indicated that the most common type of claim he sees is tort claims involving administrative issues.

#### Question #4

Of the 28 surveys returned:

15 (54%) indicated that Administrative legal action cost them the most in time and money

5 (18%) indicated EMS legal action cost them the most in time and money

3 (11%) indicated Apparatus legal action cost them the most in time and money

3 (11%) indicated that Other types of legal action cost them the most in time and money.

2 of these cited Training issues specifically

1 did not cite the issue

2 (7%) indicated fire ground operations legal action cost them the most in time and money

Of the five personal interviews:

IA indicated property damage claims have cost the city most in time and money.

IB indicated that the fire department does not have significant legal costs for any specific liability.

IC indicated that settling workman's compensation claims cost the city the most in time and money.

ID indicated that property claims cost the city the most in time and money.

IE indicated that sexual harassment and race discrimination claims cost the fire industry the most in time and money.

#### Question #5

Of the 28 surveys returned:

13 (46%) have conducted classroom education to limit exposure to liability

9 (32%) have conducted practical training to limit exposure to liability

4 (14%) have done Other means of reducing exposure to liability

3 cited the creation and/or implementation of new policies or SOP's

1 cited the dissemination of news items involving potential liability for their employees

2 (8%) have made no effort to limit exposure to liability

Of the five personal interviews:

IA indicated that he is unaware of what the fire department has done to limit liability.

IB indicated that the department has been proactive in training their supervisors to better prepare and document training and operational SOP's.

IC indicated that the fire department does an excellent job of "policing their own" and the department does not have many instances to address.

ID indicated that ongoing training is essential to the department's ability to limit potential liability; particularly in workman's compensation claims.

IE indicated that the fire department has done a poor job of preparing their administrators to address discrimination and inconsistencies within human resource management.

#### Question #6

Of the 28 surveys returned:



17 (61%) of respondents said their actions have been successful in limiting liability

9 (32%) of respondents said their actions have not been successful in limiting liability

2 (7%) of respondents said they did not know if their actions have had an impact on limiting liability.

Of the five personal interviews:

Both IA and IB indicated that the fire department does a very good job in reducing liability claims.

IC indicated that the fire department's extensive policies, procedures, and guidelines are integral to the reduction in claims.

ID indicated that out of 500 claims annually, the fire department is responsible for less than 5% of them.

IE indicated that the fire industry's efforts to reduce liability have yielded mixed results.

## Discussion

It is clear from survey data that firefighters appear to be most concerned about liability in the form of inappropriate actions on the fire ground, followed closely by negligent EMS care, with discrimination a distant third. This is an interesting contrast to the data obtained from attorneys and risk managers, who by their own admission, know little about what concerns the majority of firefighters. As Skye Garcia Salt Lake City Risk Manager (IC) stated: "I

don't think firefighters are overly concerned about liability, in general, with their jobs. They are the good-guys" (Garcia Personal Interview, 2012). This leads one to believe that many may have an overly confident sense of immunity. However, one interviewee (IE) is confident that from his experience as both a firefighter and an attorney, the most disconcerting issue for firefighters nationwide is discrimination. This conclusion is ultimately validated in subsequent questions, as well.

Property damage claims were the most common type of claims seen by the vast majority of fire departments in the survey. This would make sense given the amount of damage that can occur on the fire ground with large volumes of water, access/egress issues, overhaul, and salvage. Even training outside of a controlled environment and testing hydrants can contribute to property damage claims as purported by the both risk managers. It is noteworthy also that one city attorney (IA) stated that damage claims from fire scenes are not produced from "inappropriate actions on scene" but rather excessive water or structural damage as a result of ventilation (Roberts Personal Interview, 2012). Tort claims were the next most common type of legal action, representing the vast majority of other responses. These two options, although making up the majority of answers, are distinctly different in nature and impact. Property damages are normally less significant in all respects for a fire department. A tort claim, on the other hand, can become considerably more impactful to both the fire department and the city.

More detailed solicitation of survey data reveals that administrative actions are a far more common source of legal claims than apparatus movement claims (#2) and EMS care

claims (#3). The lack of apparatus-related lawsuits is surprising. Given the commonality within fire departments regarding large apparatus driven at relatively high speed, the author anticipated a greater percentage of lawsuits resulting from emergency vehicle accidents. Brad Preston, a certified risk manager with VFIS of Southern New England, who serves more than 500 fire service and EMS provider clients in New England. According to Preston, "Excepting injuries on duty, vehicle accidents make up the most frequent dollar loss for fire-EMS operations. Insurers would see this, but I am not surprised that courts do not. That's because although these claims are frequent, the individual losses are usually not severe. They're often small property damage losses with no injuries, such as a few thousand dollars for a pumper striking another vehicle as it parks at a fire scene. These claims are usually settled by insurers and never rise to the level of legal action" (Varone, 2010b).

Interestingly enough, claims occurring as a result of training or lack thereof, were almost as common as EMS care claims. Claims as a result of fire ground operations were the least common type reported by our respondents. This is in sharp contrast to the common perspective of firefighters that negligence on the fire ground is a common basis for legal action. As Curt Varone says, firefighters are more likely to sue the fire department than "Mrs. Smith" (Varone Personal Interview, 2012). Simply put, criminal claims as a result of fire operations are not common. Apparatus movement, and then EMS care appear to be involved in a significant amount of claims. However, these are considerably less than that of administrative actions. This indicates that fire departments need to focus resources on effective administrative skills.

This is not to say that fire incidents do not have their share of liability instances. In fact, they are the most likely type of *emergency* to give rise to a lawsuit. Ironically, however, more than 60% of structure fire lawsuits are filed by firefighters, not by victims (Varone Personal Interview, 2012). For instance, in the case of *Beard v Staffordshire Fire and Rescue and UB Plastics* in April 2008, a judge ordered Stafford Fire to pay damages to firefighter Robert Beard for injuries sustained during a structure fire. Firefighter Beard was moving gas cylinders from the fire structure when his foot fell into a dip in the ground. He suffered injury to his leg and lower back as a result. The Judge's rationale was that Stafford Fire and Rescue should have provided specific training in lifting or not lifting (as appropriate) gas cylinders in such a situation (Griffiths, 2008).

In lieu of this, it is worthy to note that Administrative actions are cited as the most expensive legal action for more than one-half of respondents. This is undoubtedly a result of many disciplinary issues that create not only lost work-hours for the department, but the need to attribute time, money, and additional resources to address the legal implication of the action. Other than disciplinary, administrative actions may include hiring processes, promotional evaluations, OSHA proceedings, contractual grievances, and unfair labor practice complaints. A distant second according to the survey is EMS care suits, which would encompass a wide-variety of disciplines from on-scene care, to transport care, to community in-house care. Given that emergency medical care is such a significant part of fire -based EMS, it is interesting that negligent care legal action is not more prominent in the respondent data. Eighty percent of the interviewees were split between property damage and/or workman's compensation claims as being the most costly for fire departments. The dissenting opinion originating from the

firefighter/attorney (IE). Varone maintains that in no uncertain terms, these issues pale in comparison to the potential cost of a sexual harassment or race discrimination suit. These types of legal proceedings can leave indelible scars on both and organizations' reputation and culture (Varone Personal Interview, 2012).

Response was mixed regarding any proactive means to curb liability and the success rates of those that have implemented programs to address it. It is clear that fire departments are utilizing both classroom and practical training to impact the negative consequences of liability, it is unclear whether their efforts are directed specifically to reduce liability, or for improving job skills. The purpose of training in the fire service is to ensure preparedness for the difficult and often dangerous situations that encompass emergency fire response. Sufficient training and preparation can mean quicker and more effective responses to emergencies. When examined from a legal perspective, more effective responses mean less exposure to liability for the fire department (Royston, 2009). The author was surprised at the limited number of departments that reported an increase of policies and/or SOP's. This is commonly assumed in many organizations to be the most immediate way to modify behavior in an effort to minimize liability in the workplace. More research will be necessary in this area to determine the effectiveness of additional regulations.

More troubling is the fact that some departments are doing nothing to educate or train their firefighters for the possibility or prevention of legal action. Training can certainly seek to limit potential liability. In training firefighters, fire departments have the same responsibilities as other employers; there is an affirmative obligation to warn and instruct employees about

dangers of which the employer knows or ought to know, and of which the employee has no knowledge (Kennedy 1983). This would include the ever-increasing presence of liability.

The results are clear regarding the effectiveness of these efforts. A greater number of departments who have implemented measures to reduce liability indicate that their efforts have been successful rather than unsuccessful, and the difference is significant. These data indicate value to training, not only for apparatus movement, professional EMS care, and competent fire ground operations, but particularly for administrative actions involving supervision, succession, and discipline. As one city attorney (IA) says, Awareness is the key. The fire department has done a good job of teaching its supervisors to do the right thing (Roberts Personal Interview, 2012). Thus administrative training should be included in every departments agenda because this is where the potential liability lies. A larger sample of data would potentially yield more significant results indicating an even greater value of administrative training to fire departments. Overall, the results indicate some common trends: Truly proactive fire organizations are not only fundamentally sound in emergency operations, but also in personnel management. To limit liability, it is in the latter where departments should focus much of their time, energy, and resources.

## RECOMMENDATIONS

It is reasonable, then, that the most practical means for Salt Lake City Fire Department to reduce its exposure to liability is to focus on safe and effective administrative and personnel training based on human resource- focused programs. This training should be incorporated into

any officer development training that currently exists. This undoubtedly is easier said than done, but certainly within the capability of an organization designed and staffed such as the Salt Lake City Fire Department. Fire service organizations owe a duty, under OSHA and other city, state, and federal laws to firefighters and other employees to create and maintain a safe and healthful work environment. This duty of care extends not only to the physical locations but also to equipment, inspection, and repair, establishment of appropriate standard operating procedures (SOP's), workplace rules and regulations, and beyond. Failure to comply with these laws can result in fines and /or penalties, and where a fire fighter is injured, killed, or accused of wrongdoing, the potential for liability (Jenaway, 1984). Why would this same expectation not be accepted for training our own people to work effectively within the organization?

Of course, reducing exposure to liability per se', should not be the sole reason to improve training methods or objectives. It is more a by-product of teaching the organization to perform up to its capabilities, yet recognize its limitations. It is important to note that protecting ourselves from financial liability is not the sole reason , nor perhaps even the primary reason that we should be concerned about legal liability. If fear of being held financially liable was our primary motivator, we would simply purchase more liability insurance. When we talk about reducing liability, we really are talking about taking steps to lessen the likelihood of an event occurring that could lead to a law suit. In other words, we are talking about doing things in a way that is safer for our personnel and the public. It means doing things right (Varone, 2010a).

The challenge becomes making the training applicable to our employees. It starts with updated training methods. It is no longer business as usual. It is no longer enough just to train on taking the hydrant and raising the ladder. We are being asked to do more with less all the time, and this makes us more vulnerable to stress, overwork, and eventual liability. How about training our supervisors to operate short-staffed? How will that impact operations on a structure fire? What about diversity and integration in the fire service? What about harassment and discrimination? Kevin Murphy states that:

Training is a vital part of fire department and emergency medical services (EMS) operations. It is made even more important because of the changing mission of the departments and the inherent dangers of the job. In today's environment of reduced budget, reduced staff, and fire station closures, coupled with additional calls for service, constant and comprehensive training becomes even more important for all departments large and small (Murphy, 2012).

Documentation and updated policies and procedures needs to be part of the equation. . The NFPA has developed qualification standards that are widely accepted as a foundation for various training disciplines. Policies should take these into account and further detail acceptable (and unacceptable) performance in accomplishing training objectives. Training fire service personnel on how to properly document training can help ensure an accurate record exist in the event such information is necessary to defend against a lawsuit. Similarly, maintaining those response records helps to ensure the information is available when needed. To defend ourselves from a negligence lawsuit, not only do we need to meet the standard of



care, we have to be able to prove that we met the standard of care. That means documentation (Varone, 2010a).

Another common problem faced by many administrators is the challenge of getting everyone to the training. Organizations big and small often have difficulties arranging training and personal schedules to meet the requirements of mandatory training. This is an easy trap for department's to fall into when days get hectic and it becomes easy to say that "most everyone got the training." But when the OSHA inspector arrives at the door and the one individual involved was on vacation that day and did not receive the training, there will be little latitude awarded the department. The fastest way to reduce fire department risk and liability is to make sure that all personnel meet a minimum training requirement. Required training must include all personnel. If they are not attending training and meeting a minimum level of competence, personnel will become a risk to the department very quickly (Royston, 2009).

Training with legal counsel is necessary and valuable to the workforce. Within the Salt Lake City Fire Department legal counsel is provided by a dedicated city attorney "attached" to the department from the greater Salt Lake City Attorney' office. This attorney does his best to identify potential patterns of misconduct when they are brought to his attention. But the attorney is not a firefighter and is not familiar with the environment that firefighters work in. The attorney is often consulted with potential disciplinary action but is not always apprised of potential training lapses or vehicular accidents that could have been prevented if addressed proactively with existing data. In addition, the general distrust that public safety officers have for attorneys works to undermine their efforts. This, combined with the general lack of

technical expertise attorneys have regarding emergency response, often leads to distrust on both sides.

That being said, attorneys and firefighters are important partners for one another, which is why they must better understand their roles. Attorneys must do a better job of understanding and learning how firefighters operate. This will improve their credibility within the ranks and allow for more productive communication between the two entities. Firefighters cannot continue to operate under the contention that “It’s an emergency. We don’t have time for legalities.” Both parties must examine the law and develop policies that facilitate service that is safe, effective, and certain to withstand the scrutiny of law. In doing so, fire administrators will need to accept the responsibility of educating their employees on how the law is associated with emergency response. This is an executive leadership issue that can only be addressed through job-wide education program. As William Nicholson says, fire leaders must understand the difference between policy actions and operational actions. It is not only the operational actions for which you can be found legally liable. Any distinction of owing a greater duty the public at large as opposed to an individual should become less discerning as the issue climbs the administrative ladder (Nicholson, 1996). This training will ultimately save fire departments costs associated with loss of work hours, costs of legal services, negative public perception, and the stress encumbered by firefighters.

Of course it is impossible to preplan for every possible legal contingency, just as it is impossible for incident commanders to preplan for every possible fire ground contingency. A department’s responsibility has to be limited to planning for those problems that can be

anticipated; which are clearly identified in this research. The availability of multi-role training can significantly reduce a departments potential for legal action. This type of risk management is a broad initiative that includes not only broad education, but specific training in documentation, awareness, and preparation in anticipation of a lawsuit that will undoubtedly materialize at some point. Insightful fire service leaders have leveraged this concept to their advantage; an effective liability risk-management program not only reduces the organizations exposure to lawsuits, it enhances firefighter safety (Varone, 2010a). Thus, proactive fire departments who train their employees in diversified roles, both operational and administrative, limit risk to their organization as well as their firefighters.

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## Appendix A

Gilbert, AZ	Montgomery, AL	Richmond, VA
Madison, WI	Modesto, CA	Lubbock, TX
Chula Vista, CA	Aurora, IL	Akron, OH
Grand Prairie, TX	Yonkers, NY	Little Rock, AK
St. Petersburg, FL	Colombus, GA	Glendale, CA
Norfolk, VA	Grand Rapids, MI	Huntsville, AL
Corona, CA	Knoxville, TN	Norfolk, VA
Laredo, TX	Providence, RI	Overland Park, KS
Chandler, AZ	Garden Grove, CA	Boise, ID
Tacoma, WA	Fort Lauderdale, FL	Ontario, CA
Winston-Salem, NC	Vancouver, WA	Springfield, MO
Glendale, AZ	Pembroke Pines, FL	Eugene, OR
Oceanside, CA	Sioux Falls, SD	Orlando, FL
Reno, NV	Palmdale, CA	Springfield, MA
Chesapeake, VA	Salinas, CA	Pasadena, TX
Irving, TX	Rochester, NY	Rockford, IL
Fremont, CA	San Bernadino, CA	